

Union Calendar No. 75

108TH CONGRESS
1ST SESSION**H. R. 923****[Report No. 108–153]**

To amend the Small Business Investment Act of 1958 to allow certain premier certified lenders to elect to maintain an alternative loss reserve.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 26, 2003

Mr. DOOLITTLE introduced the following bill; which was referred to the Committee on Small Business

JUNE 12, 2003

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italic]

[For text of introduced bill, see copy of bill as introduced on February 26, 2003]

A BILL

To amend the Small Business Investment Act of 1958 to allow certain premier certified lenders to elect to maintain an alternative loss reserve.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 *This Act may be cited as the “Premier Certified Lend-*
 3 *ers Program Improvement Act of 2003”.*

4 **SEC. 2. LOSS RESERVES OF PREMIER CERTIFIED LENDERS**
 5 **TEMPORARILY DETERMINED ON THE BASIS**
 6 **OF OUTSTANDING BALANCE OF DEBEN-**
 7 **TURES.**

8 *Paragraph (6) of section 508(c) of the Small Business*
 9 *Investment Act of 1958 (15 U.S.C. 697e(c)) is amended—*
 10 *(1) by striking “The Administration” and in-*
 11 *serting the following:*

12 *“(A) IN GENERAL.—The Administration”;*
 13 *and*

14 *(2) by adding at the end the following new sub-*
 15 *paragraph:*

16 *“(B) TEMPORARY REDUCTION BASED ON*
 17 *OUTSTANDING BALANCE.—Notwithstanding sub-*
 18 *paragraph (A), during the 2-year period begin-*
 19 *ning on the date that is 90 days after the date*
 20 *of the enactment of this subparagraph, the Ad-*
 21 *ministration shall allow the certified develop-*
 22 *ment company to withdraw from the loss reserve*
 23 *such amounts as are in excess of 1 percent of the*
 24 *aggregate outstanding balances of debentures to*
 25 *which such loss reserve relates. The preceding*
 26 *sentence shall not apply with respect to any de-*

1 *benture before 100 percent of the contribution de-*
 2 *scribed in paragraph (4) with respect to such de-*
 3 *benture has been made.”.*

4 **SEC. 3. ALTERNATIVE LOSS RESERVE PILOT PROGRAM FOR**
 5 **CERTAIN PREMIER CERTIFIED LENDERS.**

6 *(a) IN GENERAL.—Subsection (c) of section 508 of the*
 7 *Small Business Investment Act of 1958 (15 U.S.C. 697e)*
 8 *is amended by adding at the end the following new para-*
 9 *graphs:*

10 “(7) *ALTERNATIVE LOSS RESERVE.—*

11 “(A) *ELECTION.—With respect to any eligi-*
 12 *ble calendar quarter, any qualified high loss re-*
 13 *serve PCL may elect to have the requirements of*
 14 *this paragraph apply in lieu of the requirements*
 15 *of paragraphs (2) and (4) for such quarter.*

16 “(B) *CONTRIBUTIONS.—*

17 “(i) *ORDINARY RULES INAPPLI-*
 18 *CABLE.—Except as provided under clause*
 19 *(ii) and paragraph (5), a qualified high loss*
 20 *reserve PCL that makes the election de-*
 21 *scribed in subparagraph (A) with respect to*
 22 *a calendar quarter shall not be required to*
 23 *make contributions to its loss reserve during*
 24 *such quarter.*

1 “(ii) *BASED ON LOSS.*—A qualified
2 *high loss reserve PCL that makes the elec-*
3 *tion described in subparagraph (A) with re-*
4 *spect to any calendar quarter shall, before*
5 *the last day of such quarter, make such con-*
6 *tributions to its loss reserve as are necessary*
7 *to ensure that the amount of the loss reserve*
8 *of the PCL is—*

9 “(I) *not less than \$100,000; and*

10 “(II) *sufficient, as determined by*
11 *a qualified independent auditor, for*
12 *the PCL to meet its obligations to pro-*
13 *tect the Federal Government from risk*
14 *of loss.*

15 “(iii) *CERTIFICATION.*—*Before the end*
16 *of any calendar quarter for which an elec-*
17 *tion is in effect under subparagraph (A),*
18 *the head of the PCL shall submit to the Ad-*
19 *ministrator a certification that the loss re-*
20 *serve of the PCL is sufficient to meet such*
21 *PCL’s obligation to protect the Federal Gov-*
22 *ernment from risk of loss. Such certification*
23 *shall be in such form and submitted in such*
24 *manner as the Administrator may require*
25 *and shall be signed by the head of such PCL*

1 *and the auditor making the determination*
 2 *under clause (ii)(II).*

3 “(C) *DISBURSEMENTS.*—

4 “*(i) ORDINARY RULE INAPPLICABLE.*—
 5 *Paragraph (6) shall not apply with respect*
 6 *to any qualified high loss reserve PCL for*
 7 *any calendar quarter for which an election*
 8 *is in effect under subparagraph (A).*

9 “*(ii) EXCESS FUNDS.*—*At the end of*
 10 *each calendar quarter for which an election*
 11 *is in effect under subparagraph (A), the Ad-*
 12 *ministration shall allow the qualified high*
 13 *loss reserve PCL to withdraw from its loss*
 14 *reserve the excess of—*

15 “*(I) the amount of the loss reserve,*
 16 *over*

17 “*(II) the greater of \$100,000 or*
 18 *the amount which is determined under*
 19 *subparagraph (B)(ii) to be sufficient to*
 20 *meet the PCL’s obligation to protect*
 21 *the Federal Government from risk of*
 22 *loss.*

23 “(D) *RECONTRIBUTION.*—*If the require-*
 24 *ments of this paragraph apply to a qualified*
 25 *high loss reserve PCL for any calendar quarter*

1 *and cease to apply to such PCL for any subse-*
2 *quent calendar quarter, such PCL shall make a*
3 *contribution to its loss reserve in such amount as*
4 *the Administrator may determine provided that*
5 *such amount does not exceed the amount which*
6 *would result in the total amount in the loss re-*
7 *serve being equal to the amount which would*
8 *have been in such loss reserve had this para-*
9 *graph never applied to such PCL. The Adminis-*
10 *trator may require that such payment be made*
11 *as a single payment or as a series of payments.*

12 “(E) *RISK MANAGEMENT.*—*If a qualified*
13 *high loss reserve PCL fails to meet the require-*
14 *ment of subparagraph (F)(iii) during any period*
15 *for which an election is in effect under subpara-*
16 *graph (A) and such failure continues for 180*
17 *days, the requirements of paragraphs (2), (4),*
18 *and (6) shall apply to such PCL as of the end*
19 *of such 180-day period and such PCL shall make*
20 *the contribution to its loss reserve described in*
21 *subparagraph (D). The Administrator may*
22 *waive the requirements of this subparagraph.*

23 “(F) *QUALIFIED HIGH LOSS RESERVE*
24 *PCL.*—*The term ‘qualified high loss reserve PCL’*
25 *means, with respect to any calendar year, any*

1 *premier certified lender designated by the Ad-*
2 *ministrator as a qualified high loss reserve PCL*
3 *for such year. The Administrator shall not des-*
4 *ignate a company under the preceding sentence*
5 *unless the Administrator determines that—*

6 *“(i) the amount of the loss reserve of*
7 *the company is not less than \$100,000;*

8 *“(ii) the company has established and*
9 *is utilizing an appropriate and effective*
10 *process for analyzing the risk of loss associ-*
11 *ated with its portfolio of PCLP loans and*
12 *for grading each PCLP loan made by the*
13 *company on the basis of the risk of loss as-*
14 *sociated with such loan; and*

15 *“(iii) the company meets or exceeds 4*
16 *or more of the specified risk management*
17 *benchmarks as of the most recent assessment*
18 *by the Administration or the Administra-*
19 *tion has issued a waiver with respect to the*
20 *requirement of this clause.*

21 *“(G) SPECIFIED RISK MANAGEMENT BENCH-*
22 *MARKS.—For purposes of this paragraph, the*
23 *term ‘specified risk management benchmarks’*
24 *means the following rates, as determined by the*
25 *Administrator:*

1 “(i) *Currency rate.*

2 “(ii) *Delinquency rate.*

3 “(iii) *Default rate.*

4 “(iv) *Liquidation rate.*

5 “(v) *Loss rate.*

6 “(H) *QUALIFIED INDEPENDENT AUDITOR.—*

7 *For purpose of this paragraph, the term ‘quali-*
 8 *fied independent auditor’ means any auditor*
 9 *who—*

10 “(i) *is compensated by the qualified*
 11 *high loss reserve PCL;*

12 “(ii) *is independent of such PCL; and*

13 “(iii) *has been approved by the Ad-*
 14 *ministrator during the preceding year.*

15 “(I) *PCLP LOAN.—For purposes of this*
 16 *paragraph, the term ‘PCLP loan’ means any*
 17 *loan guaranteed under this section.*

18 “(J) *ELIGIBLE CALENDAR QUARTER.—For*
 19 *purposes of this paragraph, the term ‘eligible cal-*
 20 *endar quarter’ means—*

21 “(i) *the first calendar quarter that be-*
 22 *gins after the end of the 90-day period be-*
 23 *ginning with the date of the enactment of*
 24 *this paragraph; and*

1 “(ii) the 7 succeeding calendar quar-
2 ters.

3 “(K) CALENDAR QUARTER.—For purposes
4 of this paragraph, the term ‘calendar quarter’
5 means—

6 “(i) the period which begins on Janu-
7 ary 1 and ends on March 31 of each year;

8 “(ii) the period which begins on April
9 1 and ends on June 30 of each year;

10 “(iii) the period which begins on July
11 1 and ends on September 30 of each year;
12 and

13 “(iv) the period which begins on Octo-
14 ber 1 and ends on December 31 of each
15 year.

16 “(L) REGULATIONS.—Not later than 45
17 days after the date of the enactment of this para-
18 graph, the Administrator shall publish in the
19 Federal Register and transmit to the Congress
20 regulations to carry out this paragraph. Such
21 regulations shall include provisions relating to—

22 “(i) the approval of auditors under
23 subparagraph (H); and

24 “(ii) the designation of qualified high
25 loss reserve PCLs under subparagraph (F),

1 *including the determination of whether a*
2 *process for analyzing risk of loss is appro-*
3 *priate and effective for purposes of subpara-*
4 *graph (F)(ii).*

5 “(8) *BUREAU OF PCLP OVERSIGHT.*—

6 “(A) *ESTABLISHMENT.*—*There is hereby es-*
7 *tablished in the Small Business Administration*
8 *a bureau to be known as the Bureau of PCLP*
9 *Oversight.*

10 “(B) *PURPOSE.*—*The Bureau of PCLP*
11 *Oversight shall carry out such functions of the*
12 *Administration under this subsection as the Ad-*
13 *ministrator may designate.*

14 “(C) *DEADLINE.*—*Not later than 90 days*
15 *after the date of the enactment of this Act—*

16 “(i) *the Administrator shall ensure*
17 *that the Bureau of PCLP Oversight is pre-*
18 *pared to carry out any functions designated*
19 *under subparagraph (B), and*

20 “(ii) *the Office of the Inspector General*
21 *of the Administration shall report to the*
22 *Congress on the preparedness of the Bureau*
23 *of PCLP Oversight to carry out such func-*
24 *tions.”.*

1 (b) *INCREASED REIMBURSEMENT FOR LOSSES RE-*
 2 *LATED TO DEBENTURES ISSUED DURING ELECTION PE-*
 3 *RIOD.*—*Subparagraph (C) of section 508(b)(2) of the Small*
 4 *Business Investment Act of 1958 (15 U.S.C. 697e(b)(2)) is*
 5 *amended by inserting “(15 percent in the case of any such*
 6 *loss attributable to a debenture issued by the company dur-*
 7 *ing any period for which an election is in effect under sub-*
 8 *section (c)(7) for such company)” before “; and”.*

9 (c) *CONFORMING AMENDMENTS.*—

10 (1) *Subparagraph (D) of section 508(b)(2) of the*
 11 *Small Business Investment Act of 1958 (15 U.S.C.*
 12 *697e(b)(2)) is amended by striking “subsection (c)(2)”*
 13 *and inserting “subsection (c)”.*

14 (2) *Paragraph (5) of section 508(c) of the Small*
 15 *Business Investment Act of 1958 (15 U.S.C. 697e(c))*
 16 *is amended by striking “10 percent”.*

17 (d) *STUDY AND REPORT.*—

18 (1) *IN GENERAL.*—*The Administrator shall enter*
 19 *into a contract with a Federal agency experienced in*
 20 *community development lending and financial regu-*
 21 *lation or with a member of the Federal Financial In-*
 22 *stitutions Examinations Council to study and pre-*
 23 *pare a report regarding—*

24 (A) *the extent to which statutory require-*
 25 *ments have caused overcapitalization in the loss*

1 *reserves maintained by certified development*
2 *companies participating in the Premier Certified*
3 *Lenders Program established under section 508*
4 *of the Small Business Investment Act of 1958*
5 *(15 U.S.C. 697e); and*

6 *(B) alternatives for establishing and main-*
7 *taining loss reserves that are sufficient to protect*
8 *the Federal Government from the risk of loss as-*
9 *sociated with loans guaranteed under such Pro-*
10 *gram.*

11 *(2) TRANSMISSION OF REPORT.—The report de-*
12 *scribed in paragraph (1) shall be transmitted to the*
13 *Committee on Small Business of the House of Rep-*
14 *resentatives and the Committee on Small Business*
15 *and Entrepreneurship of the Senate not later than 90*
16 *days after the date of the enactment of this Act.*

17 *(3) LIMITATION.—The amount of the contract de-*
18 *scribed in paragraph (1) shall not exceed \$75,000.*

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